

Introduced by Senator Hill

February 21, 2014

An act to amend Sections 20209.5, 20209.7, and 20209.11 of, and to repeal Sections 20209.12 and 20209.14 of, the Public Contract Code, relating to transit contracts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1433, as introduced, Hill. Local Agency Public Construction Act: transit design-build contracts.

Existing law authorizes a transit operator to enter into a design-build contract, as specified. Existing law defines a “transit operator” as a transit district, included transit district, municipal operator, included municipal operator, or transit development board, a consolidated agency, or any joint powers authority formed to provide transit service. Existing law establishes conditions for the selection of the design-build entity relating to the dollar amounts of the contracts. Existing law requires a transit operator, as defined, awarding a contract for a public works project pursuant to these provisions, to reimburse the Department of Industrial Relations for costs of performing prevailing wage monitoring and enforcement of the public works project and would require moneys collected to be deposited into the State Public Works Enforcement Fund, a continuously appropriated fund. Existing law repeals these provisions on January 1, 2015.

This bill would include in the definition of “transit operator” any other local or regional agency responsible for the construction of transit projects, thereby extending the design-build procurement authorization. The bill would eliminate the requirement that the project cost exceed a specified amount. The bill would delete the repeal date, thus extending the operation of these provisions indefinitely.

The bill, by extending the design-build procurement authorization and by extending the deposit of moneys into the State Public Works Enforcement Fund, a continuously appropriated fund, would make an appropriation.

The bill, by extending the design-build procurement authorization, would impose the statement of qualifications requirement upon transit operators, subject to penalty of perjury, thereby creating a new crime and imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 20209.5 of the Public Contract Code is
2 amended to read:
3 20209.5. As used in this article, the following terms have the
4 following meanings:
5 (a) “Best value” means a value determined by objective criteria
6 and may include, but is not limited to, price, features, functions,
7 life-cycle costs, and other criteria deemed appropriate by the transit
8 district.
9 (b) “Design-build” means a procurement process in which both
10 the design and construction of a project are procured from a single
11 entity.
12 (c) “Design-build entity” means a partnership, corporation, or
13 other legal entity that is able to provide appropriately licensed
14 contracting, architectural, and engineering services as needed
15 pursuant to a design-build contract.
16 (d) “RFP” means request for proposal.
17 (e) “Transit operator” means any transit district, included transit
18 district, municipal operator, included municipal operator, ~~or~~ transit
19 development board, ~~as defined in Section 99210 of the Public~~
20 ~~Utilities Code, or a consolidated agency as defined~~ *described* in
21 Section 132353.1 of the Public Utilities Code, ~~or~~ any joint powers
22 authority formed to provide transit service, *or any other local or*

1 *regional agency responsible for the construction of transit projects,*
2 *including, but not limited to, a county transportation commission*
3 *created by Section 130050 of the Public Utilities Code.*

4 SEC. 2. Section 20209.7 of the Public Contract Code is
5 amended to read:

6 20209.7. Design-build projects shall progress in a three-step
7 process, as follows:

8 (a) The transit operator shall prepare a set of documents setting
9 forth the scope of the project. The documents shall include, but
10 are not limited to, the size, type, and desired design character of
11 the buildings, transit facilities, and site, performance specifications
12 covering the quality of materials, equipment, and workmanship,
13 preliminary plans or building layouts, or any other information
14 deemed necessary to describe adequately the transit operator's
15 needs. The performance specifications and any plans shall be
16 prepared by a design professional duly licensed or registered in
17 California.

18 (b) Any architectural or engineering firm or individual retained
19 by the transit operator to assist in the development criteria or
20 preparation of the request for proposal (RFP) is not eligible to
21 participate in the competition for the design-build entity.

22 (c) (1) For contracts for public works projects awarded prior
23 to the effective date of the regulations adopted by the Department
24 of Industrial Relations pursuant to subdivision (g) of Section 1771.5
25 of the Labor Code, the transit operator shall establish and enforce
26 a labor compliance program containing the requirements outlined
27 in Section 1771.5 of the Labor Code or shall contract with a third
28 party to operate this labor compliance program containing the
29 requirements outlined in Section 1771.5 of the Labor Code. This
30 requirement shall not apply to projects where the transit operator
31 or the design-build entity has entered into a collective bargaining
32 agreement that binds all of the contractors performing work on the
33 project, or to any other project of the transit operator that is not
34 design-build.

35 (2) For contracts for public works projects awarded on or after
36 the effective date of the regulations adopted by the Department of
37 Industrial Relations pursuant to subdivision (g) of Section 1771.5
38 of the Labor Code, the transit operator shall reimburse the
39 department for its reasonable and directly related costs of
40 performing prevailing wage monitoring and enforcement on public

1 works projects pursuant to rates established by the department as
2 set forth in subdivision (h) of Section 1771.5 of the Labor Code.
3 All moneys collected pursuant to this subdivision shall be deposited
4 in the State Public Works Enforcement Fund created by Section
5 1771.3 of the Labor Code, and shall be used only for enforcement
6 of prevailing wage requirements on those projects.

7 (3) In lieu of reimbursing the Department of Industrial Relations
8 for its reasonable and directly related costs of performing
9 monitoring and enforcement on public works projects, the transit
10 operator may elect to continue operating an existing previously
11 approved labor compliance program to monitor and enforce
12 prevailing wage requirements on the project if it has either not
13 contracted with a third party to conduct its labor compliance
14 program and requests and receives approval from the department
15 to continue its existing program or it enters into a collective
16 bargaining agreement that binds all of the contractors performing
17 work on the project and that includes a mechanism for resolving
18 disputes about the payment of wages.

19 (d) (1) Each RFP shall identify the basic scope and needs of
20 the project or contract, the expected cost range, and other
21 information deemed necessary by the contracting agency to inform
22 interested parties of the contracting opportunity.

23 (2) Each RFP shall invite interested parties to submit competitive
24 sealed proposals in the manner prescribed by the contracting
25 agency.

26 (3) Each RFP shall include a section identifying and describing:

27 (A) All significant factors that the agency reasonably expects
28 to consider in evaluating proposals, including cost or price and all
29 nonprice-related factors.

30 (B) The methodology and rating or weighting process that will
31 be used by the agency in evaluating competitive proposals and
32 specifically whether proposals will be rated according to numeric
33 or qualitative values.

34 (C) The relative importance or weight assigned to each of the
35 factors identified in the RFP. If a nonweighted system is used, the
36 agency shall specifically disclose whether all evaluation factors
37 other than cost or price, when combined, are any of the following:

- 38 (i) Significantly more important than cost or price.
39 (ii) Approximately equal in importance to cost or price.
40 (iii) Significantly less important than cost or price.

1 (D) If the contracting agency wishes to reserve the right to hold
2 discussions or negotiations with offerors, it shall specify the same
3 in the RFP and shall publish separately or incorporate into the RFP
4 applicable rules and procedures to be observed by the agency to
5 ensure that any discussions or negotiations are conducted in a fair
6 and impartial manner.

7 (e) (1) The transit operator shall establish a procedure to
8 prequalify design-build entities using a standard questionnaire
9 developed by the Director of Industrial Relations. The standardized
10 questionnaire shall not require prospective bidders to disclose any
11 violations of Chapter 1 (commencing with Section 1720) of Part
12 7 of Division 2 of the Labor Code committed prior to January 1,
13 1998, if the violation was based on a subcontractor's failure to
14 comply with these provisions and the bidder had no knowledge of
15 the subcontractor's violations and the bidder complied with the
16 conditions set forth in subdivision (b) of Section 1775 of the Labor
17 Code. In preparing the questionnaire, the director shall consult
18 with the construction industry, building trades, transit operators,
19 and other affected parties. This questionnaire shall require
20 information relevant to the architecture or engineering firm that
21 will be the lead on the design-build project. The questionnaire
22 shall include, but is not limited to, all of the following:

23 (A) A listing of all the contractors that are part of the
24 design-build entity.

25 (B) Evidence that the members of the design-build entity have
26 completed, or demonstrated the experience, competency, capability,
27 and capacity to complete, projects of similar size, scope, or
28 complexity, and that proposed key personnel have sufficient
29 experience and training to competently manage and complete the
30 design and construction of the project.

31 (C) The licenses, registrations, and credentials required to design
32 and construct the project, including information on the revocation
33 or suspension of any license, credential, or registration.

34 (D) Evidence that establishes that the design-build entity has
35 the capacity to obtain all required payment and performance
36 bonding, liability insurance, and errors and omissions insurance,
37 as well as a financial statement that assures the transit operator
38 that the design-build entity has the capacity to complete the project.

39 (E) Any prior serious or willful violation of the California
40 Occupational Safety and Health Act of 1973, contained in Part 1

1 (commencing with Section 6300) of Division 5 of the Labor Code
2 or the federal Occupational Safety and Health Act of 1970 (Public
3 Law 91-596), settled against any member of the design-build entity,
4 and information concerning a contractor member's workers'
5 compensation experience history and worker safety program.

6 (F) Information concerning any debarment, disqualification, or
7 removal from a federal, state, or local government public works
8 project. Any instance where an entity, its owners, officers, or
9 managing employees submitted a bid on a public works project
10 and were found by an awarding body not to be a responsible bidder.

11 (G) Any instance where the entity, its owner, officers, or
12 managing employees defaulted on a construction contract.

13 (H) Any violations of the Contractors' State License Law
14 (Chapter 9 (commencing with Section 7000) of Division 3 of the
15 Business and Professions Code), excluding alleged violations of
16 federal or state law, including the payment of wages, benefits,
17 apprenticeship requirements, or personal income tax withholding,
18 or of Federal Insurance Contribution Act (FICA) withholding
19 requirements settled against any member of the design-build entity.

20 (I) Information concerning the bankruptcy or receivership of
21 any member of the entity, and information concerning all legal
22 claims, disputes, or lawsuits arising from any construction project
23 of any member of the entity during the past three years, including
24 information concerning any work completed by a surety.

25 (J) If the design-build entity is a partnership, limited partnership,
26 or other association, a listing of all of the partners, general partners,
27 or association members who will participate as subcontractors in
28 the design-build contract.

29 (K) Information concerning all settled adverse claims, disputes,
30 or lawsuits between the owner of a public works project and any
31 member of the design-build entity during the five-year period
32 immediately preceding submission of a bid pursuant to this section,
33 in which the claim, settlement, or judgment exceeds fifty thousand
34 dollars (\$50,000). Information shall also be provided concerning
35 any work completed by a surety during this period.

36 (L) In the case of a partnership or other association that is not
37 a legal entity, a copy of the agreement creating the partnership or
38 association and specifying that all partners or association members
39 agree to be liable for full performance under the design-build
40 contract.

(2) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(f) The transit operator shall establish a procedure for final selection of the design-build entity. ~~Selection shall be subject to the following conditions:~~

~~(1) In no case shall the transit operator award a contract to a design-build entity pursuant to this article for a capital maintenance or capacity-enhancing rail project unless that project exceeds twenty-five million dollars (\$25,000,000) in cost.~~

~~(2) For nonrail transit projects that exceed two million five hundred thousand dollars (\$2,500,000), the transit operator may award the project to the lowest responsible bidder or by using the best value method.~~

~~(3) For the acquisition and installation of technology applications or surveillance equipment designed to enhance safety, disaster preparedness, and homeland security efforts, there shall be no cost threshold and the transit operator may award the contract to the lowest responsible bidder or by using the best value method.~~

(g) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.

SEC. 3. Section 20209.11 of the Public Contract Code is amended to read:

20209.11. (a) ~~The~~ minimum performance criteria and design standards established pursuant to this article by a transit operator for quality, durability, longevity, life-cycle costs, and other criteria deemed appropriate by the transit operator shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the transit operator. The transit operator may retain the services of a design professional through the course of the project in order to ensure compliance with this article.

~~(b) The total price of the project shall be subject to the conditions established in subdivision (f) of Section 20209.7.~~

SEC. 4. Section 20209.12 of the Public Contract Code is repealed.

~~20209.12.— Each transit operator that elects to proceed under this article and use the design-build method on a public works project shall prepare and deliver to the Legislative Analyst's Office within 120 days of the design-build project being put into operation or by December 1, 2015, whichever occurs first, a report containing a description of each public works project financed with public funds, procured through the design-build process, and completed on or before November 1, 2015. However, if a project has been commenced, but not completed on or before November 1, 2015, the transit operator shall complete a report no later than 120 days after completion of the project. The report shall include, but not be limited to, all of the following information:~~

- ~~(a) The type of facility.~~
- ~~(b) The gross square footage of the facility.~~
- ~~(c) The company or contractor who was awarded the project.~~
- ~~(d) The estimated and actual length of time to complete the project.~~
- ~~(e) The findings established pursuant to Section 20133.~~
- ~~(f) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.~~
- ~~(g) The estimated and actual project cost.~~
- ~~(h) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protest.~~
- ~~(i) An assessment of the prequalification process and criteria.~~
- ~~(j) An assessment of the impact of retaining 5 percent retention on the project.~~
- ~~(k) A description of the labor force compliance program and an assessment of the project impact, where required.~~
- ~~(l) A description of the method used to award the contract. If best value was the method, the factors used to evaluate the bid shall be described, including the weighting of each factor and an assessment of the effectiveness of the methodology.~~
- ~~(m) An assessment of the project impact of "skilled labor force availability."~~
- ~~(n) An assessment of the design-build dollar limits on transit projects. This shall include projects where the transit operator wanted to use design-build and was precluded by the dollar limitation. It shall also include projects where the best value~~

1 ~~method of awarding contracts was not used, due to dollar~~
2 ~~limitations.~~

3 ~~(e) An assessment of the most appropriate uses for the~~
4 ~~design-build approach.~~

5 ~~(p) Any transit operator that elects not to use the authority~~
6 ~~granted may also submit a report to the entities named in~~
7 ~~accordance with the schedule in this section. This report may~~
8 ~~include an analysis of why the authority granted was not used by~~
9 ~~the operator.~~

10 SEC. 5. Section 20209.14 of the Public Contract Code is
11 repealed.

12 ~~20209.14. This article shall remain in effect only until January~~
13 ~~1, 2015, and as of that date is repealed.~~

14 SEC. 6. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.